



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2021-0181]

RIN 1625-AA09

Drawbridge Operation Regulation; Old River, between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California. This action is proposed due to the infrequent amount of vessels requiring drawbridge openings on the waterway and will reduce unnecessary staffing of the drawbridge during periods of navigational inactivity while continuing to meet the reasonable needs of navigation. The proposed rulemaking would require vessels to provide a four-hour advance notification for a bridge opening. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0181 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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| CADFW | California Department of Fish and Wildlife |
| Caltrans | California Department of Transportation |
| CFR | Code of Federal Regulations |
| CCCO | Contra Costa County Office of the Sheriff |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| OMB | Office of Management and Budget |
| NPRM | Notice of Proposed Rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background, Purpose and Legal Basis

Old River is a tidal distributary of the San Joaquin River that flows for about 40 miles and is navigable in its entirety. It is located in the southern portion of the San Joaquin River Delta. There are approximately 10 marinas on Old River and nearby waterways with two marinas upriver from the bridge. From 2011 through June 2020, the swing span opened for vessels 474 times, an average of 4.27 openings per month. Most openings have been for vessels operated by the CADFW (58%), followed by recreational vessels (22%), towboat-vessel assistance (9%), and tug and barge units (6%). Law enforcement and search and rescue vessels also used the waterway. The Caltrans (Route 4) highway bridge across Old River, mile 14.8, between Victoria Island and Byron Tract, is a swing span drawbridge. It provides a horizontal clearance of 98 feet and a vertical clearance of 12.7 feet above mean high water in the closed position with unlimited vertical clearance when fully opened. The Caltrans (Route 4) highway bridge is currently governed by 33 CFR 117.183, which requires the draw to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from

9 a.m. to 5 p.m. At all other times, the draw opens on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Due to infrequent calls for drawbridge openings, Caltrans has requested a four-hour notification year-round for drawbridge openings at this location. A four-hour notification will allow Caltrans to use personnel more efficiently and reduce unnecessary staffing of the drawbridge during periods of navigational inactivity while continuing to meet the reasonable needs of navigation on the waterway.

In order to gather public comments to the proposed operating schedule change, a test deviation was conducted from May 10, 2021 through August 7, 2021. The notice of this test deviation was published in the Federal Register (83 FR 23278) on May 3, 2021. The purpose of the test deviation was to evaluate the possible impacts to navigation with the bridge operating under a 4-hour advance notice for openings. During the test deviation period CCCO submitted a comment, stating their office responds to calls for service, including emergency situations, south of the Caltrans (Route 4) highway bridge on Old River. Most of their patrol vessels exceed the bridge vertical clearance at mean high water, and cannot transit through the bridge in the closed position. CCCO concluded that a 4-hour advance notice for bridge openings would limit their ability to respond quickly to emergencies, thus jeopardizing public safety. In response, the Coast Guard cited 33 CFR 117.31(b) "Drawbridge operations for emergency vessels," which states the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of Federal, State, and local government vessels used for public safety. Drawtender logs, during the test deviation, recorded four CADFW vessels requested openings in May, eight CADFW vessels requested openings in June, four CADFW vessels and one survey vessel requested openings in July and two CADFW vessels requested openings in August. No recreational

or commercial vessels requested an opening of the swing span during the 90 day test deviation.

III. Discussion of Proposed Rule

The Coast Guard proposes to change the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, across Old River, mile 14.8, between Victoria Island and Byron Tract, California.

This proposed rule would implement regulations for the bridge to open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

This proposed rule change would meet the reasonable needs of navigation on this portion of Old River.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities

during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for

drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Revise § 117.183 to read as follows:

§ 117.183 Old River

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Dated: October 18, 2021

Brian K. Penoyer
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District